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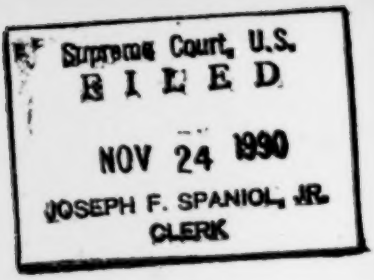

No. _____

_____

IN THE SUPREME COURT OF THE UNITED STATES

_____

October Term, 1990

_____

MAHINDER S. UBEROI, *Petitioner*

v.

BOARD OF REGENTS OF THE
UNIVERSITY OF COLORADO, *et al., Respondents*

_____

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

_____

MAHINDER S. UBEROI, *pro se*
819 Sixth Street
Boulder, CO 80302
(303) 442-2879

QUESTIONS PRESENTED

(Petitioner seeks review of 3 consolidated cases in the Court of Appeals)

1. Did the district court have jurisdiction and did respondent university have standing or case or controversy when it filed a complaint, as a bystander, to permanently enjoin petitioner from appearing *pro se* in the district alleging that petitioner had failed to prevail on some motions and claims in 2 civil rights cases in the district court and in some cases in state courts which wasted judicial resources?

2. Can petitioner be permanently enjoined from appearing as *pro se* plaintiff or proponent of a compulsory counterclaim in the district since, allegedly, he can afford counsel?

3. Are proceedings and disposition of the case by the district judge, who proceeded in violation of the order which expressly disqualified him because his fellow district judge was a defendant, null and void?

4. Was the district judge additionally disqualified and biased because,

(a) his solicitations for an honorary degree of doctor of laws were rejected by respondent university and he persisted and was given the honorary degree during this litigation,

(b) he and his family were entertained and given favors by respondent,

(c) he visited for lunch the home of president of respondent university, and

(d) he had written to the university vowing to continue to use his power, as a district judge, to advance its name and interest?

5. Did the district court have jurisdiction or any basis to revise the opinions of other federal and state courts that petitioner's lawsuits in those courts were meritorious and declare they were meritless?

6. Did the district court deny petitioner due process and equal protection when it dismissed his compulsory counterclaims, for his failure to proceed through counsel?

7. Did the district court deny petitioner due process and equal protection when, having granted preliminary injunction, it set expedited deadlines for discovery and trial on the issue of permanent injunction which were impossible to meet and did not grant a single continuance and held an *ex parte* trial for a few minutes and permanently enjoined petitioner from appearing *pro se* in the district, including filing of any post judgment motion?

8. Did the district judge deny meaningful access to the court, due process and equal protection when he instantly resolved petitioner's Fed. R. Civ. P. 60(b)(6) motion to vacate the judgment in the other case by one word "denied" without waiting for a response and giving petitioner an opportunity to substantiate his allegations?

9. Whether, under Fed. R. Civ. P. 60 (b)(6), judgment should be vacated since, in order to advance his solicitations for the honorary degree, the district judge, who was himself disqualified to handle the case, surreptitiously selected a judge from another district to handle the case who would and did illegally favor respondents?

10. Was the appellate judge, who wrote the opinion to affirm the judgments of the disqualified district judge, also disqualified because he and one of the defendants had been district judges in the same district?

11. Whether the court of appeals should have reviewed the district court's denial of petitioner's motion to refer to the United States Attorney that respondents' two counsels filed and conspired to file fraudulent affidavits which they confessed?

12. Did respondent seek equitable relief with unclean hands after committing fraud upon courts, government and to preempt petitioner's civil rights action against respondent?

LIST OF PARTIES

MAHINDER S. UBEROI, *Petitioner*

v.

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO, JACK K. ANDERSON; RICHARD J. BERNICK; FRED M. BETZ, JR.; PETER C. DIETZE; BYRON L. JOHNSON; SANDY F. KRAEMER; RACHEL B. NOEL; ROY H. SHORE; DAVID K. SUNDERLAND; GERALDINE BEAN; LOUIS BEIN; JIM R. CARRIGAN; THOMAS S. MOON; ERIC W. SCHMIDT; ARNOLD R. WEBER; ROLAND C. RAUTENSTRAUS; THEODORE C. VOLSKY; HARRISON SHULL; J. RUSSELL NELSON; LAWSON CROWE; MILTON E. LIPETZ; JAMES N. CORBRIDGE, JR.; ALFRED R. SEABASS; MAX S. PETERS; WILLIAM J. PIETENPOL; FRANK S. BARNES; KLAUS D. TIMMERHAUS; GEORGE J. MALER; GEORGE R. INGER; FRANK ESSENBURG; LOUIS C. GARBY; JAMES D. FOCH; PETER FREYMUTH; DONALD KENNEDY; MARVIN LUTTGES; HOWARD SNYDER; C. FORBES DEWEY; THOMAS G. JONES; LUDWIG OSTER; GEORGE C. VLASES; RICHARD S. BUCY; JOSHUA MENKES; WOLFGANG BANK; RUSSELL MEINZER; DAVID R. KASSOY; WILMAR F. BERNTHAL; FRANZ MOHLING; JONATHON B. CHASE; PETER BECKMANN; LEONARD G. BOONIN; LAWRENCE D. COOLIDGE; JAMES P. FRANK; EUGENE S. GOLLIN; DOROTHY GREGG; CHARLES A. KENEVAN; PHYLLIS B. KENEVAN; JOSEPH LAZAR; PHILLIP I. MITTERLING; MELVIN NEWMAN; PETER N. SIMON; GILBERT WHITE; JAMES D. WOLF; JAMES R. WAILES, *Respondents*.

In addition to civil rights, one of the cases involved claim under Federal False Claims Act. Initially, United States was not indicated as a party. On October 17, 1983, Plaintiff filed a motion to amend and tendered the amendment to include United States by Mahinder S. Uberoi as a plaintiff. District Court granted the motion on December 4, 1985. The clerk of the court did not incorporate the amendment in the caption of that case.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

MAHINDER S. UBEROI, ***petitioner***

v.

BOARD OF REGENTS OF THE
UNIVERSITY OF COLORADO, ***et al., respondents***

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, Mahinder S. Uberoi, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit, entered in the above proceedings on May 25, 1990, amended on rehearing on July 6, 1990.

OPINIONS BELOW

The opinion of the Court of Appeals for the Tenth Circuit has not been reported. It is reprinted in the appendix hereto, p. a1, *infra*.

The decision of the United States District Court for the District of Colorado is reprinted in the appendix hereto, p.a9 , *infra*.

JURISDICTION

On August 17, 1988, invoking jurisdiction under Fed.R. Civ.P. 65 and inherent authority of the district court for the

district of Colorado, respondent filed complaint for preliminary and permanent injunction against petitioner, who counterclaimed. On March 24, 1989, district court granted preliminary injunction and petitioner appealed under 28 U.S.C. §1292(a)(1).

On July 20, 1989, petitioner filed Fed.R.Civ.P. 60(b)(6) motion to vacate the judgment in petitioner's earlier action against respondents, which was denied on the same day. Petitioner's Fed.R.Civ.P. 59(e) motion challenging the denial of Rule 60(b)(6) motion was denied on August 2, 1989, and petitioner appealed under 28 U.S.C. §1291.

District Court granted permanent injunction and dismissed petitioner's counterclaims on September 25, 1989, and petitioner appealed under 28 U.S.C. §1291.

The three appeals were consolidated and the Tenth Circuit in its judgment on March 25, 1990, which on rehearing was amended on July 6, 1990, affirmed district court's orders.

The jurisdiction of this Court to review the judgment of the Tenth Circuit is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, RULES, AND CODE OF JUDICIAL CONDUCT INVOLVED

Art. III, §2, I, V, and IX Amends., 28 U.S.C. §§46(c), 292(b), 455(a), 1651(a), 1654, Fed.R.Civ.P., 5(a), 59(e), 60(b)(6) and 65. Code of Judicial Conduct, Canon 5C(4)(c). Text of the provisions is set forth in the appendix hereto.

STATEMENT OF THE CASE

Respondent Board of Regents of the University of Colorado's Complaint

Petitioner is a male U.S. citizen of Asian Indian origin, tenured professor and 3-term past chairman of Department of Aerospace Engineering of University of Colorado. Respondent is the governing body of the University.

Respondent filed a complaint which alleged that petitioner wasted judicial resources since, as *pro se* plaintiff, he had

failed to prevail on some motions and claims

(a) in a civil rights case, *Uberoi v. Richtel*, 87-Z-961, D.Colo. which was pending before another district judge and respondent was not a party to it [and the case was later dismissed as moot, each side to pay its own costs and attorney's fees],

(b) in the one and the only case against respondent, *Uberoi v. University of Colorado, et al.*, 82 M/LW 806, D.Colo. which was concluded years ago, and

(c) in civil rights and other cases in state courts; and
that petitioner's future cases may be a waste of judicial resources and may diminish or delay other potential litigants' access to the district court.

Therefore, petitioner should be permanently enjoined from appearing *pro se* in the district.

Motion to Dismiss and/or Strike

Petitioner moved to dismiss and/or strike since (a) claims based upon assumed potential invasion of right are not enough to invoke judicial intervention, (b) respondent has no standing in Art. III aspect since it has not alleged direct and substantial harm to itself, (c) respondent has failed to allege the basic requisites of the issuance of equitable relief under the circumstances - the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law, (d) jurisdiction of the district cannot be obtained on allegation of petitioner's waste of judicial resources in state courts since it raises no federal question, and (e) the district court has no jurisdiction to review allegations of waste of judicial resources in a concluded case or in a case pending before another district judge and respondent was not a party to it.

The district court denied the motion.

Proceedings Held in Violations of Court Order which Expressly Disqualified the District Judge, Statute on Recusel and Code of Judicial Conduct

District Judge S.G. Finesilver ruled that he had jurisdiction to review the entire file in the concluded case

Uberoi v. University of Colorado et al., 82 M/LW 806, D.Colo., to determine if any of petitioner's motions or claims therein were "meritless."

82 M/LW 806 was assigned to district judge R.P. Matsch. After 3 years, under 28 U.S.C. §455(a), he ordered that he and all other judges of the district were disqualified to handle the case since one of them was a defendant for his conduct before he became a judge, and that Chief District Judge, Finesilver, shall seek the assignment of an out-of-district judge to the case *following established procedure.*

Petitioner moved to disqualify Judge Finesilver since the present litigation, *inter alia*, involved a review of 82 M/LW 806 and he was proceeding in violation of the order and §455(a). He rejected those arguments and denied the motion.

In 1980, through his friends who practice before him, Judge Finesilver had solicited an honorary degree of doctor of laws from respondent university. His solicitations were rejected. He persisted for 8 years, after which he was informed that still 8 months later he will be given the honorary degree.

He wrote to the university that he continues to have daily exhilarations over the forthcoming honor and vowed to continue to use his power, as chief district judge, to advance its name and interest.

During the present litigation, at an evening commencement, he and his 6 family members were entertained by respondents. Later they were given 11 large color photographs, taken by a professional photographer, each showing a different scene of his family and his receipt of the honorary degree.

During the day of the commencement, he visited for lunch the home of president of the university. Later, he wrote letters to the president and Board of Regents of the university, thanking them for the favors received and that the honorary degree will be a continuing source of inspiration to him.

He wrote the letters on official letterhead of the court and signed them as Chief Judge United States District Court. He also violated Code of Judicial Conduct, Canon 5C(4)(c) which forbids a judge from accepting gifts or favors from a party before

him.

On discovering the foregoing facts, under §455(a), petitioner moved for disqualification of Judge Finesilver. He denied the motion since the foregoing facts do not require recusel.

After a limited hearing, he issued preliminary injunction to enjoin petitioner from appearing *pro se* in the district. Petitioner appealed.

Petitioner's Counterclaims

I. Counterclaim. Petitioner alleged that review of cases in federal and state courts, where respondent and petitioner were opposing parties, shows that respondent abused the judicial process by filing false and/or fraudulent pleadings, affidavits, and asserting meritless defenses or claims and petitioner was entitled to prospective relief.

II. Counterclaim. Respondent's conduct was part of retaliations against petitioner who exposed respondent's fraud action against the U.S. and he was entitled to relief under Federal False Claims Act. 31 U.S.C. §3730.

III. Counterclaim. Respondent's conduct was malicious interference with petitioner's right of self-representation under 28 U.S.C. §1654.

IV. Counterclaim. Respondent's conduct was retaliation for petitioner's 42 U.S.C. §1981 action against it which stated a new cause of action under §1981.

V. Counterclaim. Respondent's conduct was retaliation since petitioner lobbied the legislature and engaged in litigation which subjected respondent to Colorado Open Records Law, *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo.1984), C.R.S. §24-72-202(1.5), to Colorado Open Meetings Act and state and federal civil rights law, *Uberoi v. University of Colorado*, 713 P.2d 894 (Colo.1986), and the retaliation violated petitioner's I Amend. rights.

Petitioner also prayed for declaratory and injunctive relief.

Respondent alleged that review of the state and federal cases show that petitioner wasted judicial resources. Petitioner asserted that *the same review* supported his counterclaims which were, therefore, compulsory.

Petitioner moved that his compulsory legal counterclaims be tried before a jury before any proceedings in equity. Instead, the district court dismissed all counterclaims for petitioner's failure to proceed through counsel on these claims.

Assignment of *Uberoi v. University of Colorado et al.*, 82 M/LW 806, D. Colo. to Out-of-District Judge in Violation of 28 U.S.C. §§455(a) and 292 (b)

Petitioner assumed that Chief District Judge, Finesilver, had submitted a certificate of necessity to Chief Circuit Judge, W.J. Holloway, Jr., that all judges of the District for Colorado were disqualified to handle 82 M/LW 806 since one of them is a defendant in the case for his conduct before he became a judge of the district, and that a judge outside the District for Colorado should be assigned to the case. Petitioner further assumed that the Chief Circuit Judge had selected Judge Lee R. West of the District for Western Oklahoma to handle the case since under 28 U.S.C. §292(b) he has exclusive jurisdiction for such interdistrict assignments.

However, during the present litigation, petitioner discovered that judges Finesilver and West conspired that the latter take over the case and render decisions favorable to respondent and thereby advance the former's solicitations of honorary degree of doctor of law from respondent university.

Later, Judge Finesilver wrote to Judge Holloway that Judge West had taken over the case and he should make the designation. The Chief Circuit Judge replied that a previous designation of Judge West for another case refers to cases and adequately covered the case at hand as well. The correspondence and the old designation were filed but copies of them were not served on petitioner.

Petitioner filed motion that Judge Finesilver should

fully disclose the circumstances and reasons for his selection of Judge West to take over the case, since under 28 U.S.C. §455(a) he was ordered disqualified to handle the case and therefore was disqualified to select another judge to handle the case, *McCuin v. Texas Power & Light Co.*, 714 F.2d 1255, 1261 (5th Cir., 1983); and that Judge Finesilver has usurped the authority of the chief circuit judge who, under 28 U.S.C. §292(b) has the exclusive jurisdiction to select an out-of-district judge. Finesilver, as Chief District Judge, was required to investigate and explain why the copies of the correspondence were not served on petitioner and the service was required under Fed.R.Civ.P. 5(a). The motion was denied without any comment.

Rule 60(b)(6) Motion to Vacate the Judgment in *Uveroi v. University of Colorado, et al.*, 82 M/LW 806, D.Colo.

Petitioner filed Fed.R.Civ.P 60(b)(6) motion to vacate the judgment in 82 M/LW 806, D.Colo. He cited *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847(1988) and alleged that:

(a) the case was assigned to Judge West in serious violation of 28 U.S.C. §§455(a) and 292(b), *supra*, p.6,

(b) injustice was caused to petitioner and the United States when the judge granted summary judgment for respondents on petitioner's claim of over $21 million under Federal False Claims Act against them since he may not pursue *pro se* the claim and denied motions to separate the *qui tam* claim and have a licensed attorney enter an appearance on his behalf while the judge had ruled that the claim was meritorious and petitioner may pursue it *pro se* since respondents defrauded him as well as the government, and awarded respondents their costs and attorney's fees in violation of the Act which mandates that an informer with meritorious claim should be protected and rewarded but not punished,

(c) injustice was caused to petitioner, who was pursuing his meritorious civil rights claims and advancing public policy considered to be of the highest priority when the judge dismissed with prejudice the claims for failure to complete discovery in one month after respondents answered the complaint and awarded them costs and attorney's fees, and

(d) denial of relief will produce injustice in other cases by having a chilling effect on other plaintiffs with meritorious actions under Federal False Claims Act and/or civil rights claims and undermine public's confidence in the judicial process.

Further Proceedings in Violation of Statute and Court Order which Expressly Disqualified the District Judge

Petitioner moved to disqualify Judge Finesilver from handling the motion for vacatur in 82 M/LW 806 since, under §455(a), Judge Matsch had disqualified all judges of the district from handling the case and Judge Finesilver had accepted the order when he selected Judge West of Western Oklahoma District to handle the case. Judge Finesilver denied the motion to disqualify him.

Judge Finesilver resolved the motion for vacatur in 82 M/LW 806, on the same day it was filed, with one word "denied" and identically resolved petitioner's Rule 59(e) motion challenging the denial of motion for vacatur without waiting for respondents' response and giving petitioner an opportunity to substantiate his allegations in the motion for vacatur.

Ex Parte Trial, Denial of Petitioner's Motions to Refer to U.S. Attorney that Respondents had Filed Fraudulent Affidavits for Attorney's Fees and Entry of Permanent Injunction

District court, having granted preliminary injunction, set expedited deadlines for discovery and trial on the issue of permanent injunction which were impossible to meet since the trial would involve review and relitigation of 6 state and 2 federal cases. It did not grant a single continuance and held an *ex parte* trial for a few minutes and granted permanent injunction and enjoined petitioner from *pro se* filing of any post judgment motion.

Petitioner had filed a motion with supporting evidence that district court should refer to U.S. Attorney that respondents' two counsels filed and conspired to file fraudulent affidavits on attorney's fees incurred by them in 82 M/LW 806. The motion was denied at the *ex parte* proceeding since that occurred in "another case."

Judgment of the United States Court of Appeals for the Tenth Circuit, Written by Disqualified Judge

Circuit Judge Moore, who wrote the judgment, was disqualified under 28 U.S.C. §455(a) since, from 1982 to 1985, he and Jim Carrigan, a defendant in 82M/LW806, were fellow district judges in the District for Colorado.

He affirmed district court order permanently enjoining petitioner from appearing *pro se* in the district and dismissal of counterclaims for failure to proceed through counsel since petitioner can afford counsel and a district court has power to do so under 28 U.S.C. §1651(a).

He refused to review the denial of Rule 60(b)(6) motion to vacate the judgment in 82 M/LW 806. On rehearing he affirmed the denial since it was within the discretion of district court. And judge Finesilver's decision to proceed in violation of the order which expressly disqualified him was a harmless error since his judgment on the merits was, anyway, correct.

He refused to consider several other meritorious issues raised on appeal and otherwise denied due process.

REASONS FOR GRANTING THE WRIT

I

Respondent has no case or controversy or standing

Case-or-controversy considerations, the court observed in *O'Shea v. Littleton*, 414 U.S. 488, 499(1974), "obviously shade into those determining whether the complaint states a sound basis of equitable relief." *Allen v. Wright*, 468 U.S. 737, 760(1984).

> In part those words [case or controversy] limit the business of federal courts to questions presented in an adversary position... . *Flast v. Cohen*, 392 U.S. 83, 95(1968).

Respondent's allegations that petitioner's future cases may waste judicial resources which may limit or delay other potential litigants' access to the district court did not put the two in an adversary position.

> Unadorned speculation will not suffice to invoke the federal judicial power. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 44(1976).
>
> Claims based upon assumed potential invasion of right are not enough to warrant judicial intervention. *Ashwander v. T.V.A.*, 297 U.S. 288, 324(1936).

Respondent lacks standing since its allegation that it may suffer harm, clearly infinitesimal and at most small and insignificant, from petitioner's alleged potential waste of judicial resources is no more than harm which the general public may suffer and fails to allege direct and substantial interest.

> As we reiterated last term, the standing question in its Art. III aspect is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant *his* invocation of federal court jurisdiction and to justify exercise of the court's jurisdiction on his behalf. *Simon, supra*, at 38, citing *Warth v. Seldon*, 422 U.S. 490, 498-499, (1975). [Emphasis in the original.]
>
> It is according to this settled principle that allegations of both individual respondents and the respondent organizations must be tested for sufficiency. *Simon* at 39.

Moreover, an individual or an entity has no standing to deprive another of his basic constitutional and statutory rights. In federal courts, 28 U.S.C. §1654 guarantees the right of all parties "to plead and manage their causes personally."

Respondent has failed, moreover, to establish the basic requisites of the issuance of equitable relief under the circumstance - the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law. Petitioner has already canvassed the necessarily conjectural nature of the threatened injury to which respondent is allegedly subjected. And if petitioner ever filed a *pro se* complaint and if he failed to prevail on any of his motions or claims and if they are adjudged frivolous, the Fed.R.Civ.P. 11 and other legal remedies for attorney's fees would provide adequate relief. See *O'Shea, supra*, at 502.

Furthermore, petitioner's past claims against respondent

have been and any future claims are likely to be based on civil rights law and/or Federal False Claims Act which specifically provide for attorney's fees for frivolous actions, 42 U.S.C. §1988 and 31 U.S.C. §3730(d)(3). Respondent would not be entitled to attorney's fees and injunction against future civil rights claims and action under the Act since it will contravene the public policy to advance the rights of protected classes and shield an informer with meritorious claims under the Act.

II

District court lacked subject matter jurisdiction

Respondent's complaint alleged that petitioner wasted judicial resources in state and federal courts.

Jurisdiction of district court cannot be obtained on allegation of petitioner's waste of judicial resources in state courts, since it raises no federal question.

> The Federal Courts being of limited jurisdiction, the presumption at every stage of the cause is that it is without their jurisdictions, unless the contrary appears from the records. *Mansfield, C& L.M.S. Co. v. Swan*, 11 U.S. 379(1894).

Uberoi v.University of Colorado et al., 82 M/LW 806, D.Colo., was concluded years ago and the district court lacked jurisdiction to reopen and review it to determine if petitioner had wasted judicial resources there.

Uberoi v. Richtel, 87-Z-961, D.Colo. was pending before another district judge, and Judge Finesilver lacked jurisdiction to review the ongoing proceedings and to determine if petitioner was wasting judicial resources there.

III

District judge proceeded in knowing violations of statute on recusal, court order which expressly disqualified him, and code of judicial conduct

Under 28 U.S.C. §455(a), Judge Matsch's order disquali-

fied all judges of the district from handling 82 M/LW 806 since one of them was a defendant therein. Judge Finesilver denied petitioner's motion to disqualify him, proceeded in violation of §455(a) and the order which expressly disqualified him, and denied, without comment, petitioner's Fed.R.Civ.P. 60(b)(6) motion to vacate the judgment in 82 M/LW 806.

> After reviewing the record, we conclude there was no substance to the underlying Rule 60(b) motion... [therefore] Judge Finesilver's failure to recuse himself was harmless error. [Ct. of Appeals, *infra*, p. a 2.]

Due process and equal protection provisions of the V Amendment absolutely forbid a disqualified judge from conducting any proceeding or rendering any decision. If he, nevertheless, proceeds, then his ruling or judgment is null and void. The Court of Appeal is required to reverse it. It cannot affirm it on the basis that it is supported by the record since due process and equal protection also require that no court may rely on or take judicial notice of the record of proceedings before a disqualified judge.

> Because of the disqualification, we treat the proceedings and the disposition below as a nullity. *Nixon v. United States*, 620 F.2d 486,487 (5th Cir.1980).

Moreover, Judge Finesilver dismissed Rule 60(b)(6) motion without comment and without waiting for a response. Therefore, the only record on this matter consists of petitioner's allegations in the motion.

> The allegations in Rule 60(b)(6) motion should be considered as allegations in an independent action and must be taken as true when denying the motion or dismissing the action. *Scheuer v. Rhodes*, 416 U.S. 232, 236(1974), *Martin v. King*, 417 F.2d 458, 461(10th Cir. 1986).

Clearly, Judge Finesilver knowingly denied petitioner meaningful access to the court, due process and equal protection and this is further evidence of his extreme prejudice and bias toward petitioner.

Judge Finesilver was also disqualified from handling re-

spondent's complaint for injunctive relief since it, *inter alia*, involved a review of the merits and the judgment in 82 M/LW 806

Judge Finesilver was disqualified from handling all aspects of the present litigation on several additional independent grounds.

(1)

He received an honorary degree of doctor of laws from respondent university during this litigation which had been long been denied him.

He clearly violated §455(a) and Code of Judicial Conduct, Canon 5 C(4)(c), which forbid a judge from receiving a gift or favor from a party before him. His excuse, as accepted by the Tenth Circuit, is that:

[t]he offer and acceptance of an honorary degree occurred before the University's injunctive action was filed. [Ct. of Appeals, *infra*, p. a 7.]

The opinion condones a serious violation of §455(a) and the Code and invites others to violate them. Now, in the Tenth Circuit, a party may offer gift or favor to a judge who may accept the offer before the case is filed and then accept the gift or favor after the case is filed and comes before him, since the deal was arranged before the donor was a party before him.

> [the] design and purpose of the Code [of Judicial Conduct] were to impose a conduct upon the judges to which they must conform... And like the attempt of a judge to exercise judicial power when prohibited by state or federal statutes, we find that such attempt [to proceed in violation of the statutes or code] was void. *Cuyahoga Valley Board of Mental Retardation v. Association of Cuyahoga County Teachers of the Trainable Retarded*, 351 N.E. 2nd 777, 783 (Ohio,1975).

(2)

Judge Finesilver's letter to respondent university that he continues to get daily exhilarations about the forthcoming receipt of the honorary degree, long denied him, shows that he

was emotionally involved. His written vow to use his power, as district judge, to advance the name and interest of the university documents his bias in favor of respondent. He should have immediately recused himself when respondent's case came before him, but did not do so.

(3)

He and his family were entertained at the evening commencement and later given gifts of 11 large color photographs each showing a different scene of them and his receipt of the honorary degree which again violated §455(a) and the Code of Judicial Conduct, Canon 5C (4)(c).

(4)

During the day of the commencement, he visited for lunch the home of president of the university. Later, he wrote letters to the president and the Regents of the university, profusely thanking them for the gifts and favors received.

Home Placement Service v. Providence Journal Co., 739 F.2d 671(1st Cir.1984) held that recusal from antitrust action against newspaper was required under §455(a), where the judge invited a reporter of the newspaper to his home which resulted in a complimentary article about the judge in the newspaper and the judge was aware that the newspaper was a party to the case before him.

IV

Petitioner cannot be permanently enjoined from appearing *pro se* in the district because, allegedly, he can afford counsel

> In this case, the condition that Professor Uberoi must be represented by counsel does not deny his [sic] access to the courts because he has the means to obtain representation for meritorious claims. [Ct of Appeals, *infra*, p. a 5.]

The record does not establish that petitioner has the means to obtain counsel. 28 U.S.C. §1654 guarantees in the federal courts the right of all parties "to plead and manage their causes personally or by the assistance of...counsel" without reference

to the financial means of the parties.

> The Founders believed that self-representation was basic right of a free people. *Faretta v. California*, 422 U.S. 806, n 39(1975).

Therefore, petitioner believes that the right of self-representation is a constitutional right backed by I Amend. right to petition the government through the courts, and IX Amend. guarantees this basic right even though not enumerated in the Constitution.

> We start with the proposition that the right of self-representation...is a right of high standing, but not simply a practice to be honored or dishonored by a court depend ing on its assessment of the desiderata of a particular case. *O'Reilly v. New York Times Co.*, 692 F.2d 863,867(Sec ond Cir. 1982).

Petitioner has the right that the trial to permanently deprive him of his basic constitutional and statutory right of self-representation be by a jury. The district court denied petitioner's motion that the trial on this issue and compulsory legal counterclaims be by a jury.

In any case, as shown herein below, there is no basis in the records on petitioner's 2 federal and 6 state cases for the extravagant findings of the district court.

> [f]indings by a trial judge unsupported by the records are evidence that the judge relied on extrajudicial sources in making such determination indicating personal bias and prejudice. *Peacock Records Inc. v. Checker Records Inc.*, 430 F.2d 85,89 (7th Cir. 1970); cf. *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1986).

V

Without jurisdiction or any basis in the records, District Court revised opinions of federal and state courts in other cases

The concluded case *Uberoi v. University of Colorado, et al*

82 M/LW 806 D.Colo., was adjudged meritorious by the trial court. The case pending before another district judge, *Uberoi v. Richtel*, 87-Z-961, D.Colo., was also adjudged meritorious.

As to the state cases, consider the following examples: *Uberoi v. University of Colorado et al.*, 686 P.2d 785 (Colo. 1984) was adjudged meritorious. *Uberoi v. El Malakh et al.*, 84 CV 1907-5, Boulder District Court, Colorado, 1984, was adjudged meritorious and petitioner accepted defendants' offers of judgment.

Without jurisdiction or any basis in the record, Judge Finesilver rendered the opinion that the foregoing lawsuits were "meritless," *infra*, p. a 17, which is opposite to the opinions of the federal and state courts that the lawsuits were meritorious.

VI

In the underlying case, district court denied petitioner due process and equal protection when it repeatedly ordered him to complete all discovery and compelled him to prepare pretrial order when respondents had not even answered the complaint

Respondent alleged that petitioner had wasted judicial resources in *Uberoi v. University of Colorado, et al.*, 82 M/LW 806, D.Colo. Therefore, he should be permanently enjoined from appearing *pro se*.

That case was assigned to Judge Matsch, who asked Magistrate D.E. Abram to supervise the discovery. Petitioner requested production of documents covering a 10-year period since respondents' violations of petitioner's civil rights and fraud under Federal False Claims Act extended over that period, at least. Respondents' incomplete production covered a period of just one year.

Petitioner filed motion to compel. The Magistrate wrote a secret memorandum to Judge Matsch that discovery of documents from respondents was limited to a one year period, since extending it beyond this period will be extremely expensive and time consuming. This, even though petitioner had offered to pay for it. For three years, Judge Matsch did not resolve petitioner's motion to compel.

At the same time, the Magistrate repeatedly ordered petitioner to complete all discovery and compelled him to prepare a pretrial order even though respondents had not even answered the complaint.

For years, Judge Matsch refused to resolve petitioner's motion for temporary injunction to prevent respondents from destroying his research experiments and motion for preliminary injunction to permit petitioner to teach since respondents had prevented him from teaching any course in spite of his tenured professorship.

After 3 years, Judge Matsch disqualified himself and all other judges of the district, since one of them was a named defendant for his conduct before he became a judge.

The case was assigned to Judge West of the District of Western Oklahoma. He held an all-day hearing in Oklahoma over petitioner's objection and hence in violation of Fed.R.Civ.P. 77(b) that "no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties involved."

Judge West ruled that petitioner's claim under Federal False Claims Act was meritorious, and he may pursue it *pro se* since respondents had defrauded petitioner as well as the Government. He later reversed himself since petitioner may not pursue *pro se* the *qui-tam* claim and denied motions to separate the claim and have a licensed attorney enter an appearance on behalf of petitioner.

He dismissed civil rights claims for failure to complete discovery in one month after respondents answered the complaint and awarded respondents their attorney's fees for the entire 4-year proceedings. Judge West had set the discovery deadline even *before* respondents had answered the complaint.

Thus, there is no basis in the record that petitioner wasted judicial resources. On the contrary, the record established that, in violation of law, the district court oppressed and punished petitioner simply because he pursued meritorious civil rights claims and action under Federal False Claims Act and he did it

pro se.

VII

Court of Appeals was required to review the district judge's denial of petitioner's motion to refer to the United States Attorney that respondents' two counsels filed and conspired to file fraudulent affidavits on attorney's fees

At the hearing on preliminary injunction to enjoin petitioner from appearing *pro se*, petitioner presented massive evidence to show that respondents persistently filed fraudulent pleadings and affidavits in litigation with petitioner in state and federal courts. In particular, that respondent's two attorneys, Richard Tharp and Ted Ayres, filed affidavits for their fees in *Uberoi v. University of Colorado, et al.*, 82 M/LW 806, D.Colo., and stated under oath that they have examined each other's affidavit and that there are no duplicative fees.

That Petitioner found scores of items for fees which were not incurred in that case, and he filed motion for sanctions. Judge West denied these items but refused to apply sanctions. Defendants confessed, but only after the frauds and the conspiracy to file fraudulent affidavits were discovered. Thus, the two attorneys violated 18 U.S.C. §1623, false declaration before grand jury or court and the statute on criminal conspiracy. Petitioner informed Judge Finesilver of the felonies under 18 U.S.C. §4, a person knowing of a felony shall inform a judge and the judge was required to refer the matter to the United States Attorney for Colorado but he refused to do so. Petitioner then filed a motion requesting him to do his duty. He denied the motion and ruled:

> Illustrative of the irresponsible course of conduct by Profes sor Uberoi is the fact that on August 18, 1989, defendant filed a motion for this court to order the United States Attorney for Colorado to seek indictment against plaintiff's attorney in a completely separate case. [*Infra*, p. a15.]

Over petitioner's objection, Judge Finesilver had ruled that he has jurisdiction, to review and did review the entire file in the "completely separate case" 82 M/LW 806.

Judge Finesilver clearly believes that balance of equities required that respondent be rewarded for its attorneys' felonies and conspiracy to commit felonies by permanently enjoining petitioner from appearing *pro se* when his claims in 82 M/LW 806 were adjudged meritorious by the trial court, so that petitioner may not seek redress of continuing deprivations of his civil rights that, in spite of his tenured professorship, respondent continues to prohibit him from doing any teaching or research.

The issue was properly raised on appeal, but the Court of Appeal refused to address it in its order and judgment and in its order on petition for rehearing which resolved other issues that the court had overlooked.

VIII

Compulsory counterclaims should have been heard

As requested by petitioner, his compulsory legal counterclaims should have been tried before a jury before any proceedings in equity. It is settled that the constitutional right to trial by jury should be preserved. *Beacon Theaters Inc. v. Westover*, 359 U.S. 500(1959); *Dairy Queen Inc. v. Wood*, 369 U.S. 469(1962). See also Fed. R.Civ.P. 65(a)(2).

The district court denied due process and equal protection when it ordered that petitioner should proceed through counsel on his compulsory counterclaims and may proceed *pro se* to defend respondent's claim against him. Moreover, any bifurcation of claim and compulsory counterclaims would involve relitigation of the same issues.

> In this case, the condition that Professor Uberoi must be represented by counsel does not deny his [sic] access to the courts because he has the means to obtain representation for meritorious claims. For the same reasons, we affirm the district court's dismissal of Professor Uberoi's counter claims after he failed to retain an attorney as ordered by the court on March 24, 1989. [Ct. of Appeals, *infra*, p. a5.]

As noted earlier, 28 U.S.C. §1654 guarantees the right of self-representation of parties without reference to their financial means. Furthermore, the counterclaims were meritorious on their face and there was no determination to the contrary.

IX

Unreasonably expedited trial on permanent injunction denied petitioner due process and equal protection

Respondent was not entitled to expedited proceedings for preliminary injunction, and, having been granted temporary relief, it was not also entitled to expedited trial on the issue of permanent injunction without giving petitioner a single continuance in a case which involved review or relitigation of 2 cases in federal and 6 cases in state courts.

> The trial court's legitimate concern for prevention of delay should not prejudice essential rights of parties by forcing them to go to trial without being able to fairly represent their case. *Gonzales v. Harris*, 542 P.2d 842(Colo. 1975).

In addition to 28 U.S.C. §1654, the due process and equal protection provisions of V Amend. guarantee petitioner *full and fair* opportunity to represent himself in a defensive position. The district court denied petitioner this basic right when it held an *ex parte* trial for a few minutes and permanently enjoined him from appearing *pro se* in the district and specifically enjoined him from *pro se* filing of any post-judgment motion.

X

Judgment in *Uberoi v. University of Colorado, et al.*, 82 M/LW 806, D.Colo., should be vacated based on standards set by this court

> We conclude that in determining whether a judgment should be vacated for violation of §455, it is appropriate to consider [1] the risk of injustice to the parties in the particular case, [2] the risk that the denial of relief will produce injustice in other cases, and [3] the risk of undermining the public's con fidence in the judicial process. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864 (1988).

Violations of 28 U.S.C. §§455(a), 292(b) and Fed.R.Civ.P. 5(a)

Under §455(a), Judge Finesilver was disqualified from

selecting or influencing the selection of another judge to handle 82 M/LW 806 since he was himself disqualified to handle the case.

> To permit a disqualified Chief [District] Judge to select the judge to handle a case in which the chief judge is disabled would violate the congressional command [28 U.S.C. §455(a)] that the disqualified judge be removed from all participation in the case. It might in addition create suspicion that the disqualified judge will select a successor whose views are consonant with his. Congress intended the statutory antisepsis to be absolute in order to avoid any bacterium of impugnment. *McCuin v. Texas Power & Light Co.*, 714 F.2d 1255, 1261 (5th Cir., 1983).

McCuin court considered that disqualified chief district judge's selection of another judge was a *serious* violation of §455(a) and vacated the order of selection.

Judge Finesilver and Judge West of the District for Western Oklahoma knew that their surreptitious collusion that the latter take over 82 M/LW 806 violated §455(a); and violated §292(b) which gives the Chief Circuit Judge the exclusive authority to select a district judge to serve outside of his district. In order to conceal the violations, copies of the correspondence and the designation were not served on petitioner, as was required under Fed.R.Civ.P. 5(a).

Petitioner filed Fed.R.Civ.P. 60(b)(6) motion as soon as he discovered the violations of §§455(a), 292(b) and Rule 5(a).

Risk of injustice to the parties

After a day long in-chambers hearing Judge West ruled that:

> Defendants contend the Government was in possession of sufficient information to adequately investigate claims made by plaintiff *pro se*... This Court is not, however, convinced the information possessed by the Government would have revealed it was being charged for (1) equipment defendant otherwise acquired free; (2) salary amounts beyond the cost sharing requirement; and (3) inflated research costs... Thus, plaintiff *pro se's* action based upon the Federal False Claims Act should not be dismissed.

Later, he reversed himself and granted summary judgment for respondents since petitioner may not pursue *pro se* the *qui-tam* claim and denied motions to separate the claim and permit a licensed attorney to enter an appearance on behalf of petitioner in the separated claim.

He also awarded attorney's fees to respondents even though the Act mandates that an informer with meritorious claim is to be protected and rewarded but not punished.

Clearly, injustice was caused to petitioner and government.

Judge West dismissed with prejudice petitioner's meritorious civil rights claims for failure to complete discovery in one month after respondents answered the complaint and awarded respondents their attorney's fees. Clearly injustice was caused to petitioner.

There is absolutely no risk that the vacatur will cause any injustice to respondents since it will only permit trial of a meritorious action. And there is no indication that respondents will suffer special hardship by reason of their reliance on the original judgment.

Risk that the denial of relief will produce injustice in other cases

Denial of relief will produce injustice by discouraging plaintiffs in other cases from proceeding with their meritorious actions under Federal False Claims Act and/or civil rights claims.

> Moreover, providing relief in cases such as this will not produce injustice in other cases; to the contrary, the Court of Appeals' willingness to enforce §455 may prevent a subsequent injustice in some future case by encouraging a judge or a litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered. *Liljeberg, supra* at 868.

Risk of undermining the public's confidence in the judicial system

The fact that respondents are being rewarded for defrauding the Government and for denying the civil rights of protected classes will undermine public's confidence in the judicial system.

XI

Appellate judge, who wrote the opinion affirming judgments of the disqualified district judge, was also disqualified because he and one of the defendants had been district judges in District for Colorado and he otherwise denied due process

28 U.S.C.§455(a), and Judge Matsch's order, expressly disqualified all judges of the District of Colorado, including District Judge Moore, from handling any aspect of 82 M/LW 806 in which fellow judge Jim Carrigan was a defendant. When, in 1985, Judge Moore was appointed a judge of the 10th Circuit, he was still disqualified from reviewing the case. Nevertheless, Judge Moore proceeded with the full knowledge that he was disqualified. Therefore, his judgement is void, although scienter is not required. *Liljeberg, Nixon, Code of Judicial Conduct, Cuyahoga Valley, Supra, pp. 7, 12, 13.*

He repeatedly denied requests for oral argument even though the panel of three judges did not make the required determination that it was not needed. 10th Cir. Rule 34.19(c). The record does not show that the other 2 judges reviewed the judgments of the district court.

Judge Moore refused to consider numerous meritorious issues raised on appeal, e.g.,

Whether judicial officers of the Tenth Circuit had an affirmative duty to prevent others from violating the statute on recusal and disqualification, 28 U.S.C. §455(a)?

Whether the trial court denied due process when it took judicial notice of pleadings, opinions, rulings and judgment entered elsewhere without due process?

Whether, when moved by petitioner or *sua sponte*, the district court should have referred to the United States Attorney for Colorado, the counsel's confessed fraudulent affidavits and conspiracy to deprive petitioner of his federal rights during proceedings in federal and state courts?

Petetioner believes that he was denied review by all three judges of the panel, in violation of his rights under 28U.S.C.§46(c) and Rule 34.1.9(c), because of his minority and *pro se* status.

> [s]tatutory review is important and must be exercised with out discrimination. *National Uninion of Marine Cooks v. Arnold*, 348 U.S.37,43(1954)

XII

Respondent sought equitable relief with unclean hands after committing fraud against courts, government and to preempt petitioner's civil rights action against respondent

Respondent engaged in the said illegal conduct. *supra*.

> No principle is better settled them the maxim that he who comes into equity must come with clean hands and keep them clean throughout the course of litigation, and if he violates this rule, he must be denied all relief whatever may have been the merits of his claim. *Hazel-Atlas Glass Co., v. Hartford Empire Co.*, 322 U.S. 238, 250 (1944). *Root Refining Co., v. Universal Oil Products Co.*, 169 F.2d 514, 534-535 (3d Cir. 1948)

In 1963, petitioner was a tenured professor at the University of Michigan, when respondents enticed him to become tenured professor at the University of Colorado and the chairman of Department of Aerospace Engineering at the highest salary and with numerous promises about his own academic and salary advancements, and promises of an affirmative policy to hire women, racial and ethnic minorities; and

instead, respondents conspired to create discriminatory conditions of employment and work for petitioner, and his

associates and students who were minorities and/or women; and

petitioner was given insubstantial or no salary raises for years; and

respondents conspired to defraud petitioner's research grants from the U.S.

For years, petitioner appealed to respondents to change their unlawful policies and practices, but without any success. In 1982, he filed a suit against respondents, *Uberoi v. University of Colorado et al.*, 82 M/LW 806, D.Colo. The district court refused to consider petitioner's motions for temporary relief and respondents' unlawful conduct continued. The suit was adjudged meritorious but was dismissed on procedural grounds in contravention of the law, *supra*, p.21. Since then, respondents have prevented petitioner from teaching any course and doing any research, inspite of his tenured professorship.

They have dismantled petitioner's research experiments and moved the components to a warehouse 5 miles from the campus.

They packed petitioner's research data, manuscripts and other academic material in 35 boxes and have moved them to unkown location.

Therefore, petitioner's civil rights suit against respondent was imminent. Respondent filed action to permanently enjoin petitioner from appearing *pro se* in the district in order to preempt petitioner's action against respondent. The injunction clearly contravenes the public policy and the law which has mandated the courts to protect the civil rights of minorities.

CONCLUSION

For these various reasons, this petition for certiorari should be granted.

Respectfully submitted,

MAHINDER S. UBEROI, *pro se*
819 Sixth Street
Boulder, Colorado 80302

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Nos. 89-1117, 89-1304, 89-1337 (D.C. No. 88-F-1323 D. Colorado)

THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,

Plaintiff-Appellee,

v.

MAHINDER S. UBEROI,

Defendant-Appellant.

ORDER ON PETITION FOR REHEARING

FILED JULY 6, 1990

Before McKAY, MOORE, and BRORBY, Circuit Judges.

Mahinder s. Uberoi petitions for rehearing of his appeal of three consolidated cases before this court. After considering Professor Uberoi's claims, we concluded that our Order and Judgment in cases 89-1117 and 89-1337, affirming the district court's order permanently enjoining Professor Uberoi from filing *pro se* lawsuits in the United States District Court for the District of Colorado, should stand. For the reasons stated in our earlier order, we reject Professor Uberoi's claims in this petition that the district court lacked jurisdiction to issue a permanent injunction and that consideration of the underlying cases required Chief Judge Sherman Finesilver to review the merits of those cases. Similarly as we discussed, we deny Professor Uberoi's allegation that Judge Finesilver was disqualified to issue such injunction because he received an honorary degree from the University of Colorado.

Professor Uberoi contends the resolution of the appeal of the permanent injunction does not moot case No. 89-1304. Case No. 89-1304 appeals the district court's denial of his Fed.R.Civ.P. 59(e) motion to amend or alter denial of his Fed.R.Civ.P. 60(b)(6) motion to vacate the judgment in *Uberoi v. University of Colorado*, 82-M/LW-806. In our earlier order, we inadvertently did not address the merits of 89-1304 which

was consolidated with 89-1117 and 89-1337. Therefore, we modify our earlier order and address Professor Uberoi's claims in 89-1304.

Professor Uberoi's Rule 60(b)(6) motion to vacate the judgment in 82-M/LW 806 arises out of the reassignment of this action to Judge L.R.West in the Western District of Oklahoma. Alleging the reassignment was improper because Judge Finesilver "selected" Judge West to handle 82-M/LW-806, Professor Uberoi claims Judge West proceeded in violation of 28 U.S.C. §455(a). The district court denied the motion. Professor Uberoi then filed a Rule 59(e) motion to alter or amend denial of Rule 60(b)(6) motion to vacate judgment. The district court denied the motion, and Professor Uberoi appealed. We affirm.

We review the denial of a Fed.R.Civ.P. 59(e) motion for abuse of discretion by the trial court. *See Varley v. Tampax, Inc.*, 855 F.2d 696, 700(10th Cir. 1988). Because the denial of a Rule 60(b) motion is itself an appealable judgment, a losing party may challenge that judgment with a motion to alter or amend under Rule 59(e). *Inryco, Inc. v. Metropolitan Eng'g Co.*, 708 F.2d 1225, 1232, (7th Cir.), *cert. denied*, 464 U.S. 937 (1983). The Rule 59(e) motion challenges only the Rule 60(b) judgment, not the validity of the underlying judgment. *Id.* Therefore, our review simply focuses on whether the district court abused its discretion when it denied the Rule 59(e) motion appealing the Rule 60(b)(6) motion.

After reviewing the record, we conclude there was no substance to the underlying Rule 60(b)(6) motion. Finding no evidence of collusion among Judge Finesilver, Judge West and Chief Judge William J. Holloway, we conclude that Judge Finesilver merely determined the availability of Judge West and reported this availability to Judge Holloway in accordance with the regular system of reassignment. Therefore, we hold the reassignment of this action to Judge West and the district court's denial of the rule 60(b) motion were proper.

Because we conclude that there was no merit to the underlying Rule 60(b) motion, we hold that Judge Finesilver's failure to recuse himself was harmless error. Therefore, we find there was no basis for the Rule 59(e) motion as well.

The previous order of this court is so MODIFIED and the orders of the district court are AFFIRMED. The petition for rehearing is DENIED. The suggestion for rehearing en banc was submitted to the entire court, but no judge called for a poll on the en banc suggestion; therefore, rehearing en banc is DENIED.Entered for the Court, John P. Moore, Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Nos. 89-1117, 89-1304, 89-1337 (D.C. No. 88-F-1323 D. Colorado)

THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,

Plaintiff-Appellee,

v.

MAHINDER S. UBEROI,

Defendant-Appellant.

ORDER AND JUDGMENT[1]

FILED MAY 25, 1990

Before **McKAY, MOORE,** and **BRORBY**, Circuit Judges.

Defendant-appellant Mahinder S. Uberoi appeals a district court order permanently enjoining him from filing *pro se* lawsuits in the United States District Court for the District of Colorado.

I.

Mahinder S. Uberoi is a tenured professor at the University of Colorado at Boulder who has filed six actions in Colorado state courts and two in the United States District Court for the District of Colorado. Plaintiff-Appellee Board of Regents of the University of Colorado (the University) initiated this action to enjoin Professor Uberoi from filing *pro se* lawsuits. Professor Uberoi filed a number of counterclaims against the University.

On March 24, 1989, the district court entered a preliminary injunction prohibiting Professor Uberoi from filing or appearing in any civil action in the District of Colorado in which

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[1] This order and judgment has no precedential value and and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3

he is the proponent of a claim without representation by a licensed attorney. In its order, the court required that Professor Uberoi proceed through counsel on his counterclaims. Because Professor Uberoi did not meet the court's condition that counsel be retained within thirty days, his counterclaims were dismissed on June 16, 1989.

A hearing was held on August 21, 1989, on the merits of the University's motion for permanent injunction. Despite full notice and knowledge of the hearing date, Professor Uberoi failed to appear, and no witnesses appeared on his behalf. On September 25, 1989, the district court granted a permanent injunction barring Professor Uberoi from filing lawsuits *pro se*. The district court reviewed the previous case filings involving Professor Uberoi and concluded that "[t]o ensure the integrity of the judicial process, the court must impose some limitations on Professor Uberoi's ability to file unwarranted lawsuits." The court explained how Professor Uberoi disregards the procedures of courts in which he appears by filing actions and motions for vexatious and harassing purposes with total disregard for legal merits. The district court noted how Professor Uberoi has a pattern of seeking disqualification of judicial officers who rule against him. The district court cited several instances where Professor Uberoi misled the court or missed deadlines. Finally, the court observed how Professor Uberoi continuously disregards and refuses to follow standard methods of appeal, instead filing duplicative lawsuits or commencing suits against the judges who have ruled against him. We agree with the district court's conclusions and affirm the order enjoining Professor Uberoi from proceeding *pro se* as a proponent of any civil claim.

II.

Professor Uberoi challenges the district court's jurisdiction because the University's complaint was based in part on allegations of misconduct in state courts. However, the district court merely accepted and reviewed pleadings from state court actions and other federal suits as evidence on the issue of Professor Uberoi's competency in representing himself in legal proceedings.

A district court has power under 28 U.S.C. §1651(a) to enjoin litigants who abuse the court system by harassing their opponents. *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989).

In *Cotner v. Hopkins*, 795 F.2d 900, 902-03 (10th Cir. 1986), this court affirmed clearly tailored preconditions imposed upon a vexatious litigant. "Even onerous conditions" may be imposed so long as they are designed to assist the district court in curbing the particular abusive behavior. However, they cannot be so burdensome as to deny a litigant meaningful access to the courts. *Tripati*, 878 F.2d at 352.

In this case, the district court enjoined Professor Uberoi from proceeding without the representation of an attorney. This restriction was carefully tailored to abate Professor Uberoi's repeated *pro se* filing of unwarranted lawsuits and motions. Recognizing that repeated sanctions imposed against Professor Uberoi have never proven to be effective, the district court concluded that preventative measures were necessary due to his flagrant and repeated abuse of the judicial process. While litigiousness alone will not support an injunction restricting filing activities, injunctions are proper where the litigant's abusive and lengthy history is properly set forth. *Id.* at 353.

Furthermore, this restriction is different from the requirement imposed in *Tripati v. Beaman*, where this court remanded part of the order imposing restrictions on a plaintiff's future filings because there were no guidelines as to what plaintiff must do to obtain the court's permission to file and action. 878 F.2d at 354. Here, the district court clearly stated that Professor Uberoi may proceed with his claims if he is represented by an attorney licensed to practice in the State of Colorado and admitted to practice in the United States District Court for the District of Colorado.

The right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous. *Tripati*, 878 F.2d at 351 (citing *In re Green*, 669 F.2d 779, 785 (D.C. Cir. 1981), *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir.), *cert. denied*, 450 U.S. 985 (1981). "No one, rich or poor, is entitled to abuse the judicial process." *Tripati*, 878 F.2d at 353. In this case, the condition that Professor Uberoi must be represented by counsel does not deny his access to the courts because he has the means to obtain representation for meritorious claims.

For the same reasons, we affirm the district court's dismissal of Professor Uberoi's counterclaims after he failed to retain an attorney as ordered by the court on march 24, 1989. The district court was exercising its authority to protect the University from harassing litigation and to protect its own calendar from further frivolous and time-consuming claims.

We also reject Professor Uberoi's contention that the University is without standing to bring this action. The University has met its burden of showing "a history of litigation entailing 'vexation, harassment and needless expense to [other parties]' and 'an unnecessary burden on the courts and their supporting personnel.'" *In re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984) (quoting *In re Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982), *cert. denied*, 459 U.S. 1206 (1983)).

III.

We reject Professor Uberoi's contention that under 28 U.S.C. §455, Chief Judge Finesilver is disqualified from hearing the University's injunctive request. The factual ground for his request is that the University presented Judge Finesilver with an honorary doctorate during the pendency of this case.[2] The district court rejected Professor Uberoi's motion for recusal, noting the offer and acceptance of the honorary degree occurred before the University's injunctive action was filed. In addition, the court concluded Professor Uberoi's status as a faculty member negated any contentions that the court would be biased in favor of other University officials any more so than in favor of Dr. Uberoi as a University professor.

Because the decision to recuse is within the sound discretion of the district judge, we review denial of recusal for abuse of that discretion. *Hinman v. Rogers*, 831 F.2d 937, 938 (10th Cir. 1987). Under 28 U.S.C. §455, the test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality. *Id.* at 939. Without more, merely having attended or graduated from a school, which is a party, is not a reasonable basis for questioning a judge's impartiality. *Brody v. President & Fellows of Harvard College*, 664 F.2d 10, 11 (1st Cir. 1981), *cert. denied*, 455 U.S. 1027 (1982); *see also Easley v. Michigan Board of Regents*, 853, F.2d 1351 (6th Cir. 1988). These courts reasoned that "[a]ll judges come to the bench with a background of experiences, associations, and viewpoints. This

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[2] Professor Uberoi also claims Judge Finesilver is disqualified in this matter because fellow Distric Judge Carrigan was a defendent in one of the actions on which the University's injunctive complaint is based. However, this request for injunctive releif is a seperate matter which does not require relitigation of that case. Therefore, Judge Finesilver's impartiality is not at issue, and disqualification on this ground is not required.

background alone is seldom sufficient in itself to provide a reasonable basis for appeal." *Easley*, 853 F.2d at 1356. Similarly the mere association of a judge with a party without indication the judge stands to obtain financial or other gain from a particular outcome may be insufficient to mandate disqualification. *Brody*, 664 F.2d at 11. When a judge is awarded an honorary degree from a school which is a party in current proceedings, there may be a stronger case for recusal. However, in this case, the offer and acceptance of the honorary degree occurred before the university filed this injunctive action. Therefore, the honorary degree was not an interest which could be substantially affected by the outcome of the proceeding.

This case differs from *Liljeberg v. Health Services Acquisition Co.*, 486 U.S. 847 (1988), where the Supreme Court affirmed the disqualification of a trial judge who was a trustee of a university which had a substantial financial interest in the subject matter before the trial judge. In this case, Judge Finesilver is not serving as a trustee and has no financial interest at stake in these proceedings.

IV.

We conclude that many of the issues appealed by Professor Uberoi are not properly before this court. Professor Uberoi erroneously claims the district court reviewed and relitigated several of his previous case filings in the permanent injunction trial. Thus, Professor Uberoi seeks review of several issues which were raised in 82-LW-806 and the appeals filed from that action. He also raises the issue of the propriety of the transfer of 82-LW-806 to Judge West. Judge West dismissed 82-LW-806 for Professor Uberoi's failure to comply with the court's discovery orders. This court affirms both the dismissal and award of attorney's fees against Professor Uberoi. *Uberoi v. University of Colorado*, No. 86-2186, slip. op. (10th Cir. July 8, 1987) (dismissal); *Uberoi v. University of Colorado*, No. 87-2219, slip. op. (10th Cir. July 8, 1988) (attorney's fees). Issues arising out of 82-LW-806 were decided in those actions and are not properly before this court. All other matters pending in this case not specifically resolved are now moot.

The order of the district court is **AFFIRMED**. The mandate shall issue forthwith.

Entered for the Court John P. Moore Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 88-F-1323
BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,

Plaintiff,

vs.

MAHINDER S. UBEROI,

Defendant.

MINUTE ORDER ENTERED BY CHIEF JUDGE SHERMAN G. FINESILVER

The court is also in receipt of defendant's motions to vacate judgment in *Uberoi v. University of Colorado, et al.*, motion for ruling on service of counsel, and motion for continuance of discovery cutoff, pretrial and trial settings, dated July 20, 1989. Defendant's motions are **Denied**.

Filed, July 20, 1989

JAMES R. MANSPEAKER, CLERK

by NORMA HATCHER, deputy clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 88-F-1323

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,

Plaintiff,

vs.

MAHINDER S. UBEROI,

Defendant.

MEMORANDUM OPINION AND ORDER

Sherman G. Finesilver, Chief Judge

Plaintiff Board of Regents seeks to enjoin defendant Mahinder S. Uberoi from filing *pro se* lawsuits and requests a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

Defendant is a tenured professor at the University of Colorado at Boulder. We granted a preliminary injunction by Memorandum Opinion and Order dated March 24, 1989. Trial on the merits was held on August 21, 1989. Despite full notice and knowledge of the trial date, the defendant failed to appear and no witnesses appeared on his behalf. By this order we grant plaintiff's request for permanent injunction.

Jurisdiction in this matter arises from the court's inherent authority to control judicial actions taken by litigants who come before the court. *People of the State of Colorado v. Carter*, 678 F.Supp. 1484, 1485-86 (D.Colo. 1986). Further, plaintiff has standing to pursue this matter. *In re Martin-Trigona*, 737 F.2d 1254 (2nd Cir.1984).

Although there is a constitutional right to access to the courts, there is "no constitutional right of access to the courts to prosecute an action that is frivolous or malicious." *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981). In order to protect the rights of other litigants' access to the courts, and to protect defendants from harassing, abusive, and meritless litigation, courts have authority to place reasonable restrictions on litigants who abuse the judicial process. *Phillips v. Carey*, 638 F.2d, 207, 209 (10th Cir.1981); *Theriault v. Silver*, 574 F.2d 197 (5th Cir.1978); *People of the State of Colorado v. Carter*, 678 F.Supp. 1484, 1486 (D.Colo.1986).

I.

Defendant has filed six actions in Colorado state courts and two in the United States District Court for the District of Colorado. As illustrated below, Professor Uberoi has acted frivolously or vexatiously in many matters involved in the lawsuits. The issues before us are whether Professor Uberoi should be enjoined from proceeding as a *pro se* plaintiff in this federal district, and whether that action is a reasonable restriction warranted by his abuse of the legal process. In so doing, we have considered all the testimony and evidence presented at the

hearing for preliminary injunction and orders by the various courts in which Professor Uberoi has appeared. We have also considered evidence presented at the trial on permanent injunction.

Professor Uberoi's extensive legal dealings have exposed him to a smattering of knowledge of the legal process. Yet, based upon the evidence presented, including a review of the files of the two cases filed in this district, and proceedings in state courts, it is apparent that he either does not understand important basic concepts of jurisdiction, courtroom procedure, and the appellate process, or that he has chosen to ignore these concepts. While the court has an obligation to give *pro se* litigants wide latitude in their dealings with the court, the court cannot countenance repetitious, meritless and unduly expansive filings.

II.

We review previous case filings involving defendant:

***Uberoi v. University of Colorado, et al.*, 82-LW-806, (U.S. Dist. Ct. Colo.), 1982; *aff'd*, 86-2186, slip op. (10th Cir. July 8, 1987); *cert. denied*, 87-1351 (U.S. April 4, 1984); *aff'd* 87-2219, slip op. (10th Circ. July 8, 1988); *cert. denied*, 88-1127 (U.S. February 21, 1989).**

This was a suit alleging civil rights claims against the University of Colorado and sixty-four individual defendants. After five years of litigation, the court dismissed Professor Uberoi's action for his failure to comply with the court's discovery orders.

Professor Uberoi filed appeals in the Tenth Circuit Court of Appeals based on Judge Lee West's dismissal of the action and award of attorneys' fees against him. The dismissal was affirmed on appeal. *Uberoi v. University of Colorado*, 86-2186, slip op. (10th Cir. July 8, 1987). Petition for writ of certiorari was denied. *Uberoi v. University of Colorado*, 87-1351 (U.S., April 4, 1984). The award for attorneys' fees was also affirmed. *Uberoi v. University of Colorado*, 87-2219, slip op. (10th Cir., July 8, 1988). Certiorari was again denied. *Uberoi v. University of Colorado*, 88-1127 (U.S., February 21, 1989). To date, the attorneys' fees remain unpaid.

***Uberoi v. Kirby and State Farm Insurance Co.*, 83S876-8 (Boulder County Court, Colorado, 1983); *aff'd*, 84CV0842-2 (Boulder District Court, Colorado,**

Professor Uberoi failed to include the insured, Mr. Ellefson, in the lawsuit. Rather than refile the suit and include the proper party, Professor Uberoi took an appeal to the Boulder District Court (84CV0842-2). He lost the appeal. Petition for writ of certiorari in the Colorado Supreme Court was denied.

***Uberoi v. Ellefson, Kirby and State Farm Insurance Co.*, 85CV1686-5 (Boulder District Court, Colorado, 1985); *cert. denied*, 87SA145 (Sup. Ct. Colo. 1989).**

Professor Uberoi instituted additional lawsuits stemming from the 1979 traffic accident. Professor Uberoi received a favorable judgment for $700.00. The favorable $700.00 judgment was used to offset the $3,098.00 award for attorneys' fees. The court found that Professor Uberoi acted frivolously and vexatiously and ordered him to pay the attorneys' fees. Professor Uberoi filed untimely motions and failed to follow the court's orders. His appeal to the Supreme Court of Colorado was transferred to the Colorado Court of Appeals, where it is pending.

***Uberoi v. University of Colorado, et al.*, 82CV0953-3 (Boulder District Court, Colorado, 1982); *aff'd* 686 P.2d 785 (Colo.1984).**

This case stemmed from a public records request by Professor Uberoi. The state court ruled that the Public Records Act in effect in Colorado at that time did not apply to the University of Colorado. Professor Uberoi filed a motion for reconsideration. The Colorado Supreme Court affirmed the trial court's ruling.

***Uberoi v. University of Colorado, et al.*, 83CV625-5 (Boulder District Court, Colorado, 1988); remanded, 84SA9 (Sup. Ct. Colo.1988); on appeal, 88CA0714 (Colo. Ct. App.1988).**

This case arises out of an alleged detention and assault upon Professor Uberoi. Professor Uberoi brought suit against the University of Colorado, its police officers, attorneys and other employees. The court dismissed the case for failure to state a claim. He appealed to the Colorado Supreme Court and upon remand the trial court entered summary judgment for all

defendants. His appeal is pending in the Colorado Court of Appeals.

***Uberoi v. University of Colorado, et al.*,**
85CV2080-2 (Boulder District Court, Colorado, 1985);
on appeal, 89SA228 (Sup. Ct. Colo.1989).

This case stems from the denial of certain records to Professor Uberoi under the Open Records Act and an unrelated traffic stop by a University police officer. In a hearing on the Open Records Act, Judge Murray Richtel ruled that some of the requested records should be disclosed while others were protected. As a result of the ruling, Professor Uberoi sought disciplinary actions against Judge Richtel, discussed below.

Subsequent to Judge Richtel's ruling, another hearing on the Open Records Act was held before Judge Morris Sandstead. The May 2, 1989, ruling and order of Judge Sandstead provides further evidence of Professor Uberoi's persistent and ongoing abuse of judicial process. The order points out Professor Uberoi's clear lack of proof with respect to certain claims contained in his complaint. The order clearly states that Professor Uberoi failed to present any evidence, as to his interference with contract claim, that defendants had any knowledge of the traffic stop. Rule and Order, 85CV2080-2 (Boulder District Court, Colorado, May 2, 1989) (Citation omitted). Judge Sandstead, recognizing the applicability of the injunction against Professor Uberoi issued by the Honorable Roxanne Bailin in *Board of Regents of the University of Colorado v. Uberoi*, 88CV1545-5 (Boulder District Court, Colorado, December 16, 1988), stated: "Pursuant to the terms of the injunction, the court has not considered, nor will it consider in the future, any new motions filed *pro se* by plaintiff after January 16, 1989, except as they might relate to post-judgment collection or an appeal." Despite this order, and another admonition subsequent to this order, Professor Uberoi filed several additional *pro se* pleadings.

***Uberoi v. Richtel*,**
87-Z-961, (U.S.Dist. Ct. Dist. Colo. 1987);
notice of appeal filed June 16, 1989,

As a result of Judge Murray Richtel's rulings and conduct in the case noted above, 85CV2080-2 (Boulder District Court), Professor Uberoi brought suit against Judge Richtel in

federal court. The claim asserted, *inter alia*, that Judge Richtel misinterpreted a state statute, discriminated against Professor Uberoi and stayed judgment in order to prevent Professor Uberoi his right of appeal.

This action against Judge Richtel was dismissed. Order of dismissal, May 19, 1989. Professor Uberoi filed a notice of appeal on June 16, 1989, which is pending.

Uberoi v. Malakh, et al.,
84CV1907-5 (Boulder District Court, Colorado, 1984).

This suit arises from a stop work order issued against Professor Uberoi when he began construction of a fence that appeared to exceed Boulder height limits. Defendants included the City, its employees and Professor Uberoi's neighbors.

This case is still pending, except that certain defendants have been dismissed pursuant to Professor Uberoi's acceptance of their offer of judgment.

Board of Regents of the University of Colorado v. Uberoi,
84CV1545 (Boulder District Court, Colorado, 1988);
certiorari filed, 89SC244 (Colo. Sup. Ct.1989);
on appeal, 89CA0124 (Colo. Ct. App. 1989).

In this action a Colorado state district judge issued an injunction preventing Professor Uberoi from appearing *pro se* in all proceedings in the district court of Boulder County. The state court's findings of fact and conclusions are illuminating on issues involved in this litigation. As each court determines its own jurisdiction, the order is not binding on us on principles of collateral estoppel or res judicata. The status of his appeals are unclear. Professor Uberoi filed a writ of certiorari in the Supreme Court of Colorado while an appeal is pending in the Colorado Court of Appeals.

III.

The instant case was filed on behalf of the Board of Regents of the University of Colorado. Professor Uberoi's conduct in this matter clearly illustrates why he should be prevented from further *pro se* representation. He has filed repetitive motions to disqualify the instant judge and the U.S. Magistrate. The motions for disqualification have been rejected by Tenth Circuit Court of Appeals. As we detailed, there are

continuing failures to follow court rules, filing dates and accepted court procedures.

The defendant appeared before the court at the hearing on preliminary injunction on February 28, 1989. At the time the court set trial date for the three-week trial calendar commencing August 7, 1989, and the Pretrial Conference for June 19, 1989. The court granted plaintiff's motion for preliminary injunction. The court ordered the defendant to retain counsel within thirty days or face dismissal of his counterclaims. The defendant did not act. The counterclaims were dismissed.

On March 27, 1989, the case was referred to United States Magistrate Donald Abram for the pretrial and discovery matters. Professor Uberoi was again notified of the following dates: Pretrial Conference to be held on Monday, June 19, 1989 and instructions for submitting the pretrial order; discovery cutoff on June 15, 1989; trial scheduled for three week trial calendar commencing August 7, 1989.

On June 15, 1989, defendant filed a motion for continuance of the dates set for pretrial order and trial. In support of this motion, defendant stated: "Plaintiff has refused to cooperate in discovery. Defendant is filing motion to compel. After paper discovery, Defendant will depose several witnesses. The discovery has not proceeded to a point to permit the preparation of pretrial order for trial to jury on counterclaims nor trial to the court on claims, nor to set a date for trial."

Also on June 15, 1989, defendant filed a motion to disqualify Magistrate Donald Abram. Defendant asserted that the magistrate "willfully denied [defendant] due process and equal protection guaranteed by the Constitution." The magistrate established dates for completion of discovery and pretrial conferences, and denied a motion by the defendant.

Both of defendant's motions were denied by Order of the court on June 16, 1989.

The pretrial order was entered by Magistrate Abram on June 19, 1989. Plaintiff informed the magistrate it did not intend to call any witnesses. As reflected in the order, defendant stated he would call himself as an expert witness and that he intended to call over four dozen witnesses in person or introduce their depositions at trial.

On July 20, 1989, Professor Uberoi filed a motion to continue discovery cutoff. In support of his motion, Professor Uberoi stated: "Considering the present status of the case, Uberoi has listed over fifty witnesses and plans to present extensive exhibits and analysis relating to false claims and his

defenses in other cases which will require six weeks of trial time which cannot be fitted into a three week trailing trial calendar. Further discovery should simplify issues, produce stipulations and reduce trial time." This court denied that motion by Order dated July 20, 1989.

On August 1, 1989, we directed the parties to submit trial materials on or before August 7, 1989. We also directed the parties to submit witness lists stating the nature of the testimony of each witness. Trial was unequivocally set for August 21, 1989 at 9:00 a.m.

On August 7, 1989, Professor Uberoi filed a motion for continuance. He stated: "Uberoi assumed that he would be given reasonable notice of the specific trial date and the time allowed for trial so that the witnesses could be subpoenaed on appropriate dates. It would be unreasonable to subpoena witnesses on a continuing basis for weeks." Professor Uberoi stated in the motion he received the court's August 1, 1989 Minute Order directing parties to submit trial materials on August 4, 1989. Defendant requested "that deadlines for discovery be continued for at least six months and that the trial be set when the case is at issue."

On August 7, 1989, the court directed the parties to submit trial materials on or before August 10, 1989. The court stated **"NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED."** The plaintiff complied with the order. Defendant did not comply, and failed to submit trial materials, witness names or exhibit lists.

On Friday, August 18, 1989, at 3:21 p.m. Professor Uberoi by written motion requested the court to "grant continuance of trial set for August 21, 1989, and that discovery be permitted for a year and a status report be submitted then and that trial be held after the case is at issue; and that the court provide such further and additional relief it deems just and proper."

On August 18, 1989, in the late afternoon, the motion for continuance of trial was denied. The parties were directed to appear for trial on Monday, August 21, 1989 at 9:00 a.m.

On Monday, August 21, 1989, the court called the case for trial. Plaintiff's counsel appeared, but defendant did not. No witnesses appeared on behalf of defendant. The case proceeded to trial. Illustrative of the irresponsible course of conduct by Professor Uberoi is the fact that on *August* 18, 1989, defendant filed a motion for this court to order the United States Attorney for Colorado to seek indictment against plaintiff's attorneys in

a completely separate court case that has already been tried in this federal district, affirmed by the Tenth Circuit Court of Appeals and certiorari denied by the Supreme Court. The outstanding motion to seek indictments against plaintiff's attorneys was denied. The case proceeded to trial in the absence of Professor Uberoi.

IV.

It is readily apparent that Professor Uberoi continuously disregards and refuses to follow standard methods of appeal. Instead, he brings duplicate lawsuits. Professor Uberoi exhibits a pattern of seeking disqualification of judges who rule against him. He has sought disqualification of at least eight judicial officers: State District and County Judges Bailin, Enwall, Richtel, and Sandstead, Federal District Judges Matsch, West, and Finesilver, and United States Magistrate Abram. Most recently, on October 28, 1988 he sought disqualification of the state judge presiding in Boulder District Court who issued an injunction against Professor Uberoi's acting in a *pro se* capacity. Defendent renewed the motion on December 13, 1988. Professor Uberoi testified at the hearing on preliminary injunction that he does not always seek disqualification of judges who rule against him, and cited as an example that he did not seek to disqualify Judge West in *Uberoi v. University of Colorado, et al.*, 82-LW-806 (D.Colo.1986). However, he testified before this court that he regretted failing to do so, and that he believed his problems would have been solved by disqualifying Judge West. Our review of the case file reveals that Professor Uberoi did in fact move to disqualify Judge West and to vacate all his orders on December 11, 1985. That motion was denied on December 16, 1985.

Professor Uberoi consistently disregards the procedures of courts in which he appears. His pleadings establish his lack of understanding of the rules of evidence and court procedure. His belligerent pursuit of meritless claims illustrates his complete disregard for the limited resources of the federal and state courts and the legitimate need of other persons to have access to courts. A licensed attorney, conducting himself in the same manner as this defendent, would be subject to the severest sanctions under Rules 11 and 16 of the Federal Rules of Civil Procedure, 28 U.S.C.§1927 and Code of Professional Responsibility. The fact that Professor Uberoi pursues his meritless claims in a *pro se* capacity does not excuse him from compli-

ance with the rules of this court.

Professor Uberoi files actions and motions for vexatious and harassing purposes with total disregard for legal merits. His redundant pursuit of meritless claims tax the time, energy and resources of the participants involved, and the courts in which he files suits.

Professor Uberoi has misled courts. For example, in *Uberoi v. University of Colorado, et al.*, 82-LW-806 (D.Colo. 1986), Professor Uberoi represented to the trial and appelate courts that discovery in the case had hardly begun, when forty-seven depositions were taken or scheduled to have taken. He maintained that the discovery cutoff of April 15, 1986, had not been set until February 20, 1986, when it in fact had been set at a status conference on November 26, 1985, and included in an order of December 4, 1985. Finally, he denied that trial in the case had been set for June 2, 1986, when that date had been set on February 19, 1986.

V.

For the reasons stated, it is necessary to permanently enjoin Professor Uberoi from filing or appearing in any civil action in this district in which he is the proponent of a claim, without representation by a licensed attorney. We find that other procedural mechanisms to discourage meritless claims have proven unsuccessful with Professor Uberoi. Financial sanctions can be imposed against *pro se* litigants under Rules 11 and 16 and 28 U.S.C. §1927. However, repeated sanctions imposed against Professor Uberoi have proven to be ineffective.

We have carefully considered imposition of sanctions under Rules 11 and 16 of the Federal Rules of Civil Procedure and in our opinion this approach would be unavailing. Sanctions imposed against Professor Uberoi in *Uberoi v. University of Colorado*, 82-LW-806 (D.Colo.1986), described above, have never been satisfied.

We expressly find that Professor Uberoi has flagrantly and repeatedly abused judicial process by filing meritless lawsuits and motions. It appears that this course of conduct will continue unabated unless preventive measures are imposed. To ensure the integrity of the judicial process, the court must impose some limitations on Professor Uberoi's ability to file

unwarranted lawsuits. Our injunction does not deny Professor Uberoi's access to the court. It appears that Professor Uberoi has the means to obtain representation for meritorious claims.

ORDER

It is hereby ORDERED that defendant Mahinder S. Uberoi is permanently enjoined from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court. It is further ordered that all cases pending in the United States District Court for the District of Colorado in which Professor Uberoi is the proponent of a claim, and in which he does not proceed reasonably to employ counsel to represent him, shall be subject to dismissal. This order does not apply to litigation currently pending before Judge Weinsheink, *Uberoi v. Richtel*, 87-Z-961. It is further ORDERED that:

The Clerk of the Court is DIRECTED not to accept any pleadings initiating a civil action or any case filings by Professor Uberoi unless he is represented by an attorney licensed to practice in the state of Colorado and by the United States District Court for the District of Colorado.

This order applies to any post-trial motions that defendant may file in this matter. Any post-trial motions relating to this case or other case filings of any nature must be filed through a licensed attorney admitted to practice before this court. The court denies any request for a stay of execution of this order.

This order constitutes findings of fact and conclusions of law.

Done the 25th day of September, 1989, at Denver, Colorado.

By the Court:

Sherman G. Finesilver, Chief Judge
United States District Court

CONSTITUTIONAL PROVISIONS

Art. III §2 **Jurisdiction.** (1) The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state or the citizens thereof and foreign states, citizens, or subjects.

I Amend. **Right to Petition.** Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

V Amend. **Due Process.** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in land or naval forces, in the militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; no person shall be compelled, in any criminal case, to be witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

IX Amend. **Reserved Rights.** The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

STATUTES

28 U.S.C. §46(C) **Assignment of judges; panels; hearings, quorum** Cases and controversies shall be heard and determined by a court or panel of not more than three judges....

28 U.S.C. §292(b). **District Judges.** The Chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

28 U.S.C. §455(a). **Disqualification of Justices, Judges, and Magistrates.** Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. §1651(a). **Writs.** The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. §1654. **Appearance Personally or by Counsel.** In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

RULES

Rule 5. **Service and Filing of Pleadings and Other Papers. (a) Service: When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

Rule 59(e). **New Trial; Amendment of Judgment.** Motion to alter or amend the judgment shall be served not later than 10 days after entry of judgment.

Rule 60. **Relief from Judgment or Order. (b) Mistakes: Inadvertence: Excusable Neglect; Newly Discovered Evi-**

dence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ...(6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., §1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 65. **Injunctions. (a) Preliminary Injunction**....(2) Consolidation of Hearing with Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save the parties any rights they may have to trial by jury.

Tenth Circuit Rule 34.1.9(c) **Oral Argument** will be allowed in all cases unless a panel of three judges, after examination of the briefs and the records, shall be unanimously of the opinion that oral argument is not needed. A panel shall utilize criteria that favor oral argument unless it concludes that the appeal is (1) frivolous; (2) the dispositive issue or set of issues has been authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and records and the decisional process would not be aided significantly by oral argument.

CODE OF JUDICIAL CONDUCT, CANON 5(C)(4)(c)

A judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and if its value exceeds $100.00, the judge reports it in the same manner as he reports compensation in Canon 6C.